

Order

Michigan Supreme Court
Lansing, Michigan

January 24, 2025

Elizabeth T. Clement,
Chief Justice

167166

Brian K. Zahra
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas,
Justices

GREAT LAKES EYE INSTITUTE, PC,
Plaintiff/Counterdefendant-
Appellant,

v

SC: 167166
COA: 361575
Saginaw CC: 08-002481-CK

DAVID B. KREBS, M.D.,
Defendant/Counterplaintiff-
Appellee.

On order of the Court, the application for leave to appeal the March 14, 2024 judgment of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE Part II(B)(4) of the judgment of the Court of Appeals. The trial court in this case was free to consider “relevant factors” when determining the appropriate attorney fee award. *Pirgu v United Servs Auto Ass’n*, 499 Mich 269, 282 (2016). As noted by Judge LETICA in her partial dissent, the trial court did not abuse its discretion in holding that the fact that defendant prevailed in this litigation based upon a false premise was a “relevant factor” when fashioning a fee award. *Great Lakes Eye Institute, PC v Krebs*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2024 (Docket No. 361575) (LETICA, J., concurring in part and dissenting in part), p 4.

“The law-of-the-case doctrine is a judicially created, self-imposed restraint designed to promote consistency throughout the life of a lawsuit.” *Rott v Rott*, 508 Mich 274, 286 (2021). “The law-of-the-case doctrine ‘merely expresses the practice of courts generally to refuse to reopen what has been decided, *not a limit to their power.*’ ” *Id.* at 287, quoting *Locricchio v Evening News Ass’n*, 438 Mich 84, 109 (1991) (emphasis in *Rott*; some quotation marks and citations omitted). The application of the doctrine is limited to “‘legal question[s]’ ” and requires that underlying “‘facts remain materially the same.’ ” *Locricchio*, 438 Mich at 109, quoting *CAF Investment Co v Saginaw Twp*, 410 Mich 428, 454 (1981). Further, where new evidence is presented, the law-of-the-case doctrine does not preclude a trial court on remand from revisiting a factual question underlying a legal determination. See *Mitchell v Reolds Farms Co*, 261 Mich 615, 617 (1933); *Topps-Toeller, Inc v Lansing*, 47 Mich App 720, 727-728 (1973). In this case, the law-of-the-case doctrine

prevented the lower courts from revisiting the judgment that was granted in defendant’s favor. Because neither the trial court nor the Court of Appeals had previously made an attorney fee determination, however, the law-of-the-case doctrine did not preclude the trial court from considering newly introduced evidence to determine the appropriate attorney fee award.

Additionally, the “rule of mandate” “embodies the well-accepted principle in our jurisprudence that a lower court must strictly comply with, and may not exceed the scope of, a remand order.” *Int’l Business Machines Corp v Dep’t of Treasury*, 316 Mich App 346, 352 (2016). In this case, the trial court determined correctly that the rule of mandate prohibited it from granting plaintiff’s motion to reinstate the original judgment. The rule of mandate did not, however, prohibit the trial court from making its finding. The Court of Appeals remanded the current matter to the trial court “to determine whether plaintiff is a successor to GLE’s liabilities under the employment contract and whether plaintiff is liable for defendant’s attorney fees under Section 18 of that contract.” *Great Lakes Eye Institute, PC v Krebs*, unpublished per curiam opinion of the Court of Appeals, issued January 9, 2018 (Docket No. 335405), p 6. Therefore, the trial court, on remand, was within its mandate to consider newly introduced evidence when considering the attorney fee issue because that evidence was dispositive of the mandate to determine “GLE’s liabilities under the employment contract.”

Accordingly, we VACATE the Court of Appeals’ remand instructions, and we REINSTATE the trial court’s judgment awarding defendant David B. Krebs, M.D., \$0 in attorney fees. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

We do not retain jurisdiction.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 24, 2025

Clerk